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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,404	04/26/2001	Chester Struble	P-8032	9095

27581 7590 03/23/2004

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EXAMINER

OROPEZA, FRANCES P

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/842,404

Applicant(s)

STRUBLE, CHESTER

Examiner

Frances P. Oropeza

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/7/04 (Amendment).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-124 is/are pending in the application.
- 4a) Of the above claim(s) 1-59, 65-83 and 90-124 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 60-64 and 84-89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 105-124 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Newly submitted independent claims 105, 112 and 119 are directed to an apparatus / method for identifying a conduction disorder in response to the determining the relative distribution of the sensed conduction sequences and adjusting a therapy delivered by the pacing system in response to the identified conductive disorder. The original independent claims do not include the limitations of identifying the conduction disorder, nor adjusting the therapy.

Since the Applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 105-124 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

2. Claims 60-64 and 84-88 stand rejected under 35 U.S.C. 102(e) as being anticipated by Wentkowski et al. (US 6430439). Wentkowski et al. disclose a method of collecting biventricular cardiac sense and pace data to determine conduction sequences (abstract; col. 1 @ 5-7, 26-39 and 46-51; col.1 @ 57 – col. 2 @ 6; col. 2 @ 27-34, 54-56 and 63-66; col. 3 @ 15-17 and 21-31; col. 8 @ 10-33; col. 9 @ 62-65).

The Applicant's arguments filed 1/7/04 have been fully considered but they are not convincing. The Applicant asserts the claims of the present invention are patentably distinguishable from Wentkowski et al. because the presently claimed invention is directed to determining conduction sequences propagating between chambers and defining various conductive disorders based on what would be an expected conduction sequence for a healthy heart. The Examiner disagrees. The invention as currently claimed does not determine conduction sequences propagating between chambers and define various conductive disorders based on what would be an expected conduction sequence for a healthy heart, but rather provides a method for determining the distribution of conduction sequences. Wentkowski et al. are deemed to teach the claimed instant invention of a method for determining the distribution of conduction sequences as noted above. The rejection of record stands.

Claim Rejections - 35 USC § 103

3. Claim 89 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wentkowski et al. (US 6430439) in view of Mower (US 6146586). As discussed in paragraph 2 of this action, Wentkowski et al. disclose the claimed invention except for a means for delivering antitachycardia pacing.

Mower teaches pacing therapy using overdrive pacing/ antitachycardic pacing for the purpose of providing a treatment to overcome the pathological cardiac rhythms/ conduction delays characterized by variable/ intermittent rate and/or ectopic foci often associated with congestive heart failure. It would have been obvious to one having ordinary skill in the art at the

time of the invention to have used antitachycardic pacing in the Wentkowski et al. system in order to provide a treatment that prevents potentially life threatening ventricular tachycardia (col. 1 @ 16-38; col. 4 @ 13-59).

Statutory Basis

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza, telephone number is (703) 605-4355. The Examiner can normally be reached on Monday – Friday from 9 a.m. to 5 p.m.


Art Unit: 3762

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for regular communication and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist, telephone number is (703) 308-0858.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

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3/20/04


BRIAN L. CASLER
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